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From a decree sustaining demurrer to the bill, complainant appeals. Reversed, and cause remanded, with direction to overrule demurrer and to permit defendant to answer, etc.

*Jas. G. Martin*, of Norfolk, for appellant.

*P. S. Stephenson* and *Williams & Tunstall*, all of Norfolk, for appellee.

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WHITAKER & FOWLE *v.* LANE et al.

Sept. 16, 1920.

[104 S. E. 252.]

**1. Courts (§ 89\*)—Established Rule for Which Reason Has Ceased Need Not Be Followed.**—While great consideration should be given to precedents of long duration and general acceptance, a rule, established merely by precedent, is not infallible, and if it is highly technical, so that courts have had to make exceptions thereto from time to time, and the reason therefore has ceased, it need be no longer followed.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 720 et seq.]

**2. Evidence (§ 444 (4)\*)—Delivery of Sealed Instrument to Grantee on Binding Oral Condition May Be Shown.**—Since the attaching of a seal is no longer attended with the formality it once was and has not the legal effect it formerly had as the binding obligation itself, the reason for the rule that a sealed instrument cannot be delivered to the grantee or obligee on an oral condition precedent to its effectiveness has ceased, so that it may be shown that a sealed contract for the purchase of land was delivered to the vendor to become effective only on the happening of a specified condition.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 521.]

**3. Evidence (§ 417 (17)\*)—Oral Evidence Admissible to Show Delivery of Sealed or Unsealed Instruments.**—Delivery is as essential to give effect to a sealed instrument as it is to give effect to an unsealed instrument, and parol evidence has always been admitted to show that an instrument, either sealed or unsealed, was not in fact delivered, though possession was given to grantee.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 521.]

**4. Evidence (§ 444 (2)\*)—Between Parties Parol Evidence Admissible to Prove Facts Not Contradicting Instrument.**—While in a controversy between the immediate parties of a written instrument, parol evidence is not admissible to vary, alter, or contradict the terms of

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the instrument or their legal effect, such evidence is admissible to show defenses such as purpose or condition of delivery which do not vary the legal effect of the language of the instrument.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 521.]

**5. Evidence (§ 385\*)—Parol Evidence Rule Applies to Both Sealed and Unsealed Instruments.**—The rule excluding parol evidence which varies or contradicts the terms of a written instrument, though it originated with reference to sealed instrument, has been universally extended to unsealed instruments also.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 646.]

**6. Evidence (§ 596 (3)\*)—Parol Evidence, Contravening Prima Facie Rights, Should Be Clear and Convincing.**—Parol evidence, admissible in contravention of the prima facie right of another under a written instrument, should be clear, unequivocal, and convincing.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 521.]

**7. Evidence (§ 442 (1)\*)—Parol Evidence Admissible to Show Prior Oral Contract Only Partly Reduced to Writing.**—Parol evidence is admissible on behalf of complainant to show a complete oral contract for enlarging the capital stock of a bank and selling the stock, and for the purchase by complainant of defendant's farm, only part of which, that relating to the purchase of the farm, was reduced to writing.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 521.]

**8. Equity (§ 378\*)—Issue Whose Determination Is Doubtful under Evidence Should Be Referred to Jury.**—Where the evidence was conflicting, whether a written contract for the sale of land was delivered on condition that it should not take effect except upon a stated contingency, that issue should be submitted by a court of equity to a jury.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 52.]

Appeal from Circuit Court of City of Williamsburg and County of James City.

Suit by Whitaker & Fowle against L. W. Lane, Jr., and others, to enjoin the prosecution of actions at law. Demurrer to bill sustained, and bill dismissed on its merits, and complainants appeal. Reversed and remanded.

*Williams & Tunstall* and *T. J. Wool*, all of Norfolk, for appellants.

*C. V. Meredith*, of Richmond, and *Ashton Dovell*, of Williamsburg, for appellees.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.